

Message Text

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TAGS: EIND, AR

SUBJECT: ARGENTINE LAW NO. 20,794 ON LICENSING AND TRANSFER OF
TECHNOLOGY

REF: STATE 106698

1. THE NEW GOA AUTHORITIES HAVE NOT YET INTRODUCED ANY CHANGES
IN THE TEXT OR THE ENFORCEMENT OF SUBJECT LAW.

2. GOA SOURCES CONSULTED INDICATE GOA IS CURRENTLY STUDYING A
PROJECT FOR A NEW FOREIGN INVESTMENT LAW, AND ALSO FOR A NEW
TRANSFER OF TECHNOLOGY LAW. SOURCES ALSO STATED THEIR BELIEF
THAT REVISION WOULD INCLUDE RECOGNITION OF GOOD WILL VALUE
THAT WOULD LEAD TO THE GRANTING OF SOME AUTHORIZATIONS FOR
TRADEMARKS WHERE NO TECHNOLOGY IS INVOLVED. EMBASSY MUST
EMPHASIZE, HOWEVER, THAT THESE ARE SO FAR ONLY EXPRESSED
INTENTIONS.

3. CURRENTLY, THEN, THE SITUATION REMAINS UNCHANGED. CONTRACTS
FOR THE ACQUISITION OF RIGHTS OR LICENSES FOR THE USE OR
EXPLOITATION OF TRADEMARKS (UNLESS ACCOMPANIED BY VALUABLE
TECHNOLOGY NOT AVAILABLE IN ARGENTINA OR BACKED BY PATENTS)
SHALL BE DENIED, WITH SOME EXCEPTIONS:

A. CONTRACTS INCLUDING A CLAUSE BY WHICH:

A) THE LICENSEE UNDERTAKES TO DEVELOP A LOCAL SUBSTITUTE
TRADEMARK OF ITS OWN WITHIN 5 YEARS (IN NO CASE SHALL
THIS GO BEYOND DECEMBER 31, 1979.).

B) THE LICENSER UNDERTAKES TO TRANSFER GRATUITOUSLY THE
RIGHTS OF THE FOREIGN TRADEMARK OR TO ALLOW ITS

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GRATUITOUS EXPLOITATIONS.

B. CONTRACTS IN WHICH:

- A) LICENSER GRANTS THE LICENSEE, LICENSES THAT MAKE IT POSSIBLE TO EXPORT THE PRODUCT TO OTHER COUNTRIES, PROVIDED THAT
- B) THE LICENSEE UNDERTAKES NOT TO USE IT IN NATIONAL MARKET, AND
- C) THE COST OF THE LICENSE IS CLACULATED AS A PERCENTAGE OF THE ESTIMATED NET INFLOW OF FOREIGN CURRENCY THAT MAY ENTER THE COUNTRY AS A CONSEQUENCE OF THE EXPLOITATION OF THE TRADEMARK, AND NO PAYMENT IS MADE IF THE EXPORT OPERATIONS ARE NOT EFFECTED.

4. PLEASE NOTE THAT ITEM B) OF ART. 37 OF SUBJECT LAW EMPOWERS THE EXECUTIVE TO ORDER THE INSCRIPTION OF CONTRACTS NOT ADHERING TO THE ABOVE CONDITIONS, UNDER CIRCUMSTANCES, IN WHICH NOT DOING SO WOULD RESULT IN DAMAGE TO THE ARGENTINE ECONOMY.

5. COMMENTS: ACCORDING TO TRADEMARK AND PATENT ATTORNEYS CONSULTED IN BUENOS AIRES, AMERICAN TRADEMARK OWNERS SHOULD EXPECT A RELAXATION OF THE RESTRICTIVE PRINCIPLES CONTAINED IN ART. 9 OF SUBJECT LAW SOME TIME IN THE FUTURE, BUT FOR THE TIME BEING EFORCEMENT SITUATION HAS NOT CHANGED. THOSE WITH PENDING CASES IN ARGENTINA ARE ADVISED TO STALL FOR TIME, IN THE EXPECTATION THAT WHEN THE NEW LAW IS APPROVED, IT WILL NO DOUBT BE LESS ONEROUS.

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